PP

v.

MOHAMED AZMIN ALI

COURT OF APPEAL, PUTRAJAYA
RAUS SHARIF JCA
AHMAD MAAROP JCA
SULAIMAN DAUD JCA
[CRIMINAL APPEAL NO: W-09-74-2007]
15 MAY 2009

CRIMINAL LAW: *Penal Code - Section 193 - Punishment for false evidence - Evidence alleged to be false a summarized account and essence of events - Whether accused had basis to make such statement - Whether prosecution had proved such statement to be false*

The respondent was charged with intentionally giving false evidence in a criminal trial involving Dato' Seri Anwar Ibrahim ('DSAI') before Augustine Paul J (as he then was) in the High Court. The respondent appeared as a defence witness at DSAI's criminal trial. During re-examination, the respondent was asked on matters relating to his earlier remand proceedings for an offence under s. 15 of the Anti Corruption Act 1997 before the magistrate (SP6). He testified that he told SP6 to the effect that he had been threatened and forced to implicate DSAI. The prosecution's case was that the respondent did not tell SP6 that he had been threatened and forced to implicate DSAI. By testifying in the High Court that he told SP6 those matters, the respondent had told a falsehood and since those words were uttered by the respondent himself with respect to matters at a proceeding at which he was present and personally spoke, the respondent intentionally gave false evidence. The respondent was convicted and sentenced after a retrial in the sessions' court, to 18 months' imprisonment. On the respondent's appeal, the High Court set aside the conviction and sentence. The prosecution appealed to the Court of Appeal.

A **Held (dismissing the prosecution's appeal)**
Per Raus Sharif JCA delivering the judgment of the court:

(1) Indeed, witnesses giving evidence in court must tell the truth. Witnesses on oath must respect the sanctity of the oath 'to
B tell the truth, the whole truth and nothing but the truth'. *Public Prosecutor v. Bhandulananda Jayatilake* (foll). (para 25)

(2) In the instant case, there was insufficient evidence to establish a *prima facie* case against the respondent. From the facts obtained through the cross-examination of the prosecution
C witnesses SP 4 and SP 6, the Court of Appeal was not able to hold that the evidence of the respondent was false and that he had deliberately told a falsehood. (para 28)

(3) What was stated by the respondent in DSAI's criminal trial
D as in Lampiran 1 was his summary and essence of what he had conveyed to SP6 at the remand proceedings. The two statements might differ in their form and words used but they essentially conveyed the same meaning, in that the respondent was being threatened, treated with cruelty and forced to
E implicate DSAI. The difference between the statements was a question of degree or emphasis. (para 30)

(4) Taking the respondent's remand proceedings in totality, it could not be denied that there were some elements of threat,
F cruelty and force. It could not also be said that the threat, cruelty and force failed to implicate DSAI. Thus the respondent was not telling a falsehood when he testified at DSAI's criminal trial that he was forced to implicate DSAI. The respondent clearly had some basis to make that
G statement. (paras 31, 32, 33 & 34)

(5) In the instant case, the prosecution had failed to show that the statement of the respondent as in Lampiran A was false. It was neither incredible nor impossible for the statement in
H Lampiran A to be true. Although the words in Lampiran A were not the exact words stated by the respondent to SP6 during the remand proceedings, taking the remand proceedings as a whole, the statement might not necessarily be false, nor did the respondent intentionally give false evidence. (para 37)

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(6) The respondent had raised a reasonable doubt as to the truth of the prosecution's case. He had discharged the evidential burden at the prosecution stage itself. The respondent therefore ought to be acquitted and discharged without calling for his defence. (para 38)

Bahasa Malaysia *Translation Of Headnotes*

Responden telah didakwa dengan sengaja memberikan keterangan palsu di Mahkamah Tinggi di hadapan Augustine Paul H (sepertimana beliau semasa itu), di dalam perbicaraan jenayah yang melibatkan Dato' Seri Anwar Ibrahim ('DSAI'). Responden telah hadir sebagai saksi pembelaan di perbicaraan jenayah DSAI. Semasa soal balas, responden telah ditanya tentang hal-hal berkaitan prosiding penahanan beliau yang terdahulu di hadapan majisteret ('SP6') bagi satu kesalahan di bawah s. 15 Akta Pencegahan Rasuah 1997. Beliau menyatakan bahawa beliau secara pentingnya telah memberitahu SP6 bahawa beliau telah diugut dan dipaksa untuk membabitkan DSAI. Kes pendakwaan adalah bahawa responden tidak pernah memberitahu SP6 bahawa beliau telah diugut dan dipaksa untuk membabitkan DSAI. Oleh itu, dengan memberi keterangan di Mahkamah Tinggi bahawa beliau telah memberitahu SP6 hal-hal tersebut, maka responden telah menyatakan suatu pembohongan, dan oleh kerana perkataan-perkataan tersebut diucapkan oleh responden berhubung dengan hal-hal di dalam prosiding di mana beliau sendiri hadir dan bercakap, maka responden telah memberi satu keterangan palsu dengan sengaja. Selepas satu perbicaraan semula di Mahkamah Sesyen, responden telah disabit dan dihukum 18 bulan penjara. Apapun, ekoran rayuan beliau, Mahkamah Tinggi telah mengenepikan sabitan dan hukuman dan pendakwaan kini merayu ke Mahkamah Rayuan.

Diputuskan (menolak rayuan pendakwaan)
Oleh Raus Sharif HMR menyampaikan penghakiman mahkamah:

(1) Memanglah saksi-saksi yang memberi keterangan di mahkamah wajib bercakap benar. Saksi-saksi yang mengangkat sumpah hendaklah menghormati kesucian sumpah "untuk bercakap benar, semuanya benar dan tiada apa pun melainkan benar belaka". *Public Prosecutor v. Bhandulananda Jayatilake* (diikuti).

(2) Dalam kes semasa, tidak terdapat keterangan mencukupi untuk membuktikan satu kes *prima facie* terhadap responden. Dari fakta-fakta yang terserlah dari soalan-soalan balas saksi-saksi pendakwaan SP4 dan SP6, Mahkamah Rayuan tidak dapat memutuskan bahawa keterangan responden adalah palsu dan bahawa beliau telah dengan sengaja menyatakan suatu pembohongan.

(3) Apa yang dinyatakan responden di dalam perbicaraan jenayah DSAI seperti dalam Lampiran 1 adalah suatu ringkasan dan teras dari apa yang beliau sampaikan kepada SP6 di prosiding penahanannya. Kedua-dua kenyataan tersebut mungkin berbeza dari segi perkataan dan bentuknya namun mereka pada intinya menyampaikan maksud yang sama, dalam ertikata responden telah diugut, dilayan dengan kejam dan dipaksa membabitkan DSAI. Perbezaan antara dua kenyataan tersebut cuma dari segi tahap atau penekanannya sahaja.

(4) Menimbang prosiding penahanan responden secara keseluruhannya, tidak boleh dinafikan bahawa wujud beberapa unsur ugutan, kekejaman dan paksaan. Juga tidak boleh dikatakan bahawa ugutan, kekejaman dan paksaan itu gagal membabitkan DSAI. Oleh itu responden tidaklah menyatakan suatu pembohongan apabila memberi keterangan di perbicaraan jenayah DSAI bahawa beliau telah dipaksa membabitkan DSAI. Jelasnya, responden mempunyai asas untuk membuat kenyataan tersebut.

(5) Dalam kes semasa, pendakwaan gagal menunjukkan bahawa kenyataan responden seperti di Lampiran A adalah palsu. Bukanlah tidak mungkin atau mustahil untuk Lampiran A menjadi sesuatu yang benar. Walaupun perkataan-perkataan di Lampiran A bukan perkataan-perkataan sebenar yang dilafazkan oleh responden kepada SP6 semasa prosiding penahanan, mengambilkira prosiding penahanan secara keseluruhannya, kenyataan tersebut tidak semestinya suatu pembohonan dan responden juga tidak semestinya dengan sengaja memberi keterangan palsu.

(6) Responden telah membangkitkan keraguan munasabah berkaitan kebenaran kes pendakwaan. Malah beban pembuktian tersebut telah dilepasinya di peringkat pendakwaan lagi. Responden dengan itu harus dilepas dan dibebaskan tanpa dipanggil untuk membela diri.

Case(s) referred to:
DP Vijandran v. PP [1999] 1 CLJ 691 CA ***(refd)***
Mah Kok Cheng v. R [1953] 1 LNS 53 HC ***(refd)***
PP v. Bhandulananda Jayatilake [1981] 1 CLJ 42; [1981] CLJ Rep 231 HC ***(foll)***
PP v. Saimin & Ors [1971] 1 LNS 115 ***(refd)***

Legislation referred to:
Anti Corruption Act 1997, s. 15
Criminal Procedure Code, s. 117
Penal Code, s. 193

For the appellant - Manoj Kurup; AG's Chambers
For the respondent - Dato' CV Prabhakaran (Gurucharan Singh with him); M/s Praba & Assoc

Reported by Andrew Christopher Simon

JUDGMENT

Raus Sharif JCA:

Introduction

[1] The respondent was charged with intentionally giving false evidence in a judicial proceeding, an offence under s. 193 of the Penal Code. He was alleged to have committed the offence on 9 March 1999, at the High Court, Kuala Lumpur, while testifying before Augustine Paul J(as he then was), during the criminal trial No. WPPJ Bil. 45-48 & 49 (criminal trial of Dato' Seri Anwar Ibrahim). At that time, the respondent was testifying as a defence witness (DW14).

[2] The false evidence of which the respondent was alleged to have uttered was as follows:

> SB14: Saya mengatakan kepada Majistret mengapa saya tidak boleh dilanjutkan tempoh tahanan kerana tindakan dan ugutan pihak polis semasa dalam tahanan adalah terlalu kejam dan memaksa saya membuat pengakuan yang melibatkan saudara Anwar.

[3] The above evidence was recorded during re-examination of the respondent as DW14.

[4] On 13 July 1999, the Session Court Judge, Hamdan Indah ("1st SJ") at the close of the prosecution's case, discharged and acquitted the respondent. The Public Prosecutor appealed to the High Court.

[5] On 17 February 2000, the High Court Judge, Abdul Wahab Patail J ("1st HCJ") allowed the Public Prosecutor's appeal. The case was ordered to be remitted to the Session Court for the respondent to enter on his defence.

[6] The continued hearing of the case was conducted before another Session Court Judge, Akhtar bin Tahir (2nd SJ"). On 2 May 2001, at the close of the trial, the 2nd SJ found the respondent guilty and sentenced him to eighteen (18) months imprisonment. The respondent appealed to the High Court.

[7] On 1 November 2007, the High Court Judge, Abdul Kadir Musa J ("2nd HCJ"), allowed the respondent's appeal. The conviction and sentence was set-aside. The Public Prosecutor appealed to the Court of Appeal.

[8] We heard the appeal on 7 January 2009. We unanimously dismissed it. We now give our reasons.

Facts

[9] This case had a long history. On 16 September 1998, the respondent was produced before a Magistrate (SP6) for remand under s. 117 of the Criminal Procedure Code. He had been arrested for an alleged offence under s. 15 of the Anti Corruption Act 1997. SP6 authorised a seven (7) day remand expiring on 22 September 1998.

[10] On 22 September 1998, the respondent was again produced before SP6. The Investigating Officer, ASP Chor Ah Sing (SP4) sought for an extension of the remand for another seven days. Also present during the remand proceedings were Dato' C.V. Prabhakaran and Kamar Ainiah Kamaruzzaman, both counsel for the respondent. Counsel Dato' Prabhakaran spoke against the extension of the remand. It was recorded by the SP6 as follows:

Sebelum OKT ditangkap beliau telah ke Bukit Aman dan telah dirakam statement tujuh kali. Statement semuanya bersangkut tentang buku allegation tentang Dato' Seri Anwar. Saspek juga adalah pengadu dan telah buat report ... (unintelligible) ... publication yang telah diterbitkan oleh buku itu. Dia telah ditahan 7 hari. Sebenarnya dokumen-dokumen yang pihak polis kehendaki telah pun ditanya ketika 7 kali ke Bukit Aman. Saspek ialah seorang ... (unintelligible) ... Medical report telah diberikan kepada I.O. (I.O. akui). Pohon remand tidak dilanjutkan. Jika pendakwa mahu, our client sanggup datang untuk beri keterangan.

[11] Thereafter, the respondent addressed SP6. It was recorded by SP6 as follows:

Semenjak hari pertama, saya telah maklum saya rela bagi kerjasama. Sekiranya saya bersalah, saya bersedia didakwa dan dihadapkan ke Mahkamah. Walau bagaimanapun, telah tempoh 7 hari penahanan saya, saya dapati isu utama yang dihadapkan ialah perolehan harta dan pendapatan saya. Penumpuan pada tahun 1992-1995. Saya diminta untuk beri detail sepanjang tempoh tersebut. Saya mengaku adalah mustahil saya boleh ingat jumlah sebenar semua perolehan harta simpanan saya setelah 5 tahun yang lalu.

Apabila saya diminta untuk beri anggaran yang saya ingat dan beri kerjasama, dan apabila jumlah tersebut lari dari rekod mereka jumlah, tarikh dan volume saham, saya telah dikatakan tidak bercakap benar dan tidak bekerjasama. Dalam mana-mana situasi, saya dikatakan tidak cakap benar. Kalau tak cakap saya dikatakan tak bekerjasama. [therefore] saya dah beri perakuan kepada yang menyoal adalah lebih adil sekiranya saya dibebaskan agar saya dapat ambil rekod di rumah atau institusi kewangan. Saya bersedia hadir di Bukit Aman untuk beri keterangan penuh untuk setiap transaksi dalam tempoh berkenaan. Hari ini juga saya bagi keterangan yang sama.

Mengenai buku, perkara ini disentuh masa saya ditahan khususnya semalam. Saya telah dibawa ke Bukit Aman untuk siasat tentang buku. Pada 29/7/98 atas permohonan polis, saya bagi kerjasama kepada polis untuk buat DNA (saya, isteri dan anak). Ketua Polis Negara telah umumkan resultnya bahawa saya adalah Biological parent.

Pihak polis akan minta pihak Mahkamah keluarkan perintah jika saya tidak mahu lakukan ujian DNA kedua.

A Mengenai medical check-up, keadaan saya complicated sedikit kerana saya telah lakukan operation untuk buang buah pinggang sebelah kanan kerana ada ketumbuhan. Pakar bedah saya telah siapkan laporan penuh dan bersedia untuk kemukakan kepada pihak berkuasa untuk dirujuk.

B Saya berjanji jika saya dibebaskan, saya akan bawa rekod-rekod tersebut ke Bukit Aman.

[12] Having heard the parties, SP6 refused to authorise further remand of the respondent. It was recorded by the SP6 as follows:

C IO telah membekalkan kepada saya sehelai kertas yang ditaip yang telah dikatakan ID dalam kes ini (Tandatangan saya diturunkan).

Berdasarkan keterangan yang terdapat pada kertas berkenaan, saya amat tidak berpuashati.

D Saya ingin merujuk kepada kes *Re Detention of Sivarasa & 9 other* (1996) di mana elemen-elemen dalam kes tersebut sepatutnya diikuti sebaik-baiknya demi keadilan

Oleh yang demikian, saya amat tidak berpuashati dan tidak
E membenarkan saspek ditahan lanjut. Mahkamah perintahkan agar saspek dibebaskan dan tidak berada di perkarangan Mahkamah 15 minit dari sekarang.

[13] The respondent after his release appeared in the High Court, Kuala Lumpur as a defence witness at the criminal trial of Dato'
F Seri Anwar Ibrahim. On 9 March 1999, during re-examination, the respondent was asked on matters relating to his earlier remand proceedings before SP6. It was recorded by the High Court Judge Augustine Paul J *inter alia* as follows:

G Q: How many days extension did the police ask for?

A: 7 hari lagi.

Q: You said you yourself sought permission to make representation to the Magistrate, is that correct?

H A: Ya.

Q: Were your representation made in the presence of the lawyers and police officers?

A: Ya.

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Q: Did you make any complaints to the Magistrate in the presence of the lawyers and police officers? A

A: Saya mengatakan kepada Majistret mengapa saya tidak boleh dilanjutkan tempoh tahanan kerana tindakan dan ugutan pihak polis semasa dalam tahanan adalah terlalu kejam dan memaksa saya membuat pengakuan yang melibatkan saudara Anwar dan tidak berasas sama sekali. (emphasis added) B

Q: Anything else?

A: That was all. C

[14] It was the prosecution's case that the respondent at the remand proceedings had never told SP6 that further remand should not be granted because he was being threatened and being forced to implicate Dato' Seri Anwar Ibrahim. It was the contention of the prosecution that by testifying on oath in the D High Court that he told SP6 that he had been threatened and forced to implicate Dato' Seri Anwar Ibrahim, when in fact he did not tell SP6 those matters, the respondent patently told a falsehood. Since, it was done with intent, the respondent has committed an offence under s. 193 of the Penal Code. E

Issue

[15] Thus, the single issue before us and the courts below was whether the respondent had intentionally given false evidence, when he testified as in Lampiran A that he told SP6 that he had F been threatened and forced to implicate Dato' Seri Anwar Ibrahim. In short, was the statement by the respondent in Lampiran A, a false statement.

Findings Of The 1st SJ G

[16] The 1st SJ, in acquitting the respondent held as follows:

(i) The evidence of the respondent should not be viewed in isolation or separated into individual words or sentences which may bear different meanings. Instead, the evidence of the H respondent should be viewed in the context of the relevant proceedings. The fact that the respondent had given evidence in which he said he had been threatened and treated with cruelty during remand to make an admission implicating Anwar was not false; I

A (ii) SP6 himself considered the words uttered by respondent to be 'satu tindakan kejam oleh pihak polis' and that even without the words, 'ugutan, kejam, paksa' SP6 was of the view there was 'ugutan, kejam, paksa';

B (iii) SP6 in refusing to allow further remand did not confine himself to the investigation diary but also to the submission made by counsel and respondent himself. The investigation diary showed the respondent was investigated every day from 17 September 1998 to 22 September 1998, each time not less C than 2 hours; and this in itself indicated the element of 'ugutan, paksaan dan kekejaman';

(iv) The impugned testimony was during re-examination and it was not a new evidence. The record of proceedings in the High D Court showed that the evidence bearing similar meaning had been testified by the respondent at other times.

Findings Of The 1st HCJ

[17] The 1st HCJ, in allowing the Public Prosecutor's appeal E held, *inter alia* as follows:

(i) The consistency of the respondent's evidence during the High Court trial is not in issue with which the Sessions Court should have concerned itself. There was no prior discussion as F to how the Sessions Court came to the conclusion that the respondent's testimony was not false;

(ii) The Sessions Court also failed to consider the actual and stated ground upon which SP6 rejected the remand application which was plainly due to his dissatisfaction with G the typewritten paper said to be the investigation diary;

(iii) The Sessions Court erred in accepting the uncertain "saya fikir begitu" of SP6 without considering it against the other evidence of SP6 that he would have recorded it had the H respondent mentioned any 'ugutan, kejam, paksaan' and that he had recorded everything that was stated by the respondent and his counsel. This evidence was not challenged by the defence;

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(iv) The answers by SP6 suggests confusion on his part in answering question involving conclusions based upon the limited parameters of the questions asked, and not involving direct evidence of what he saw or heard. Such conclusions are essentially speculative in nature and are of limited evidential and probative value. This was not considered by the Sessions Court;

(v) It is not sufficient for the prosecution to show that the statement in Lampiran 'A' is false. It must be shown that the respondent knew it to be false. Knowledge being a mental element can only be proven through inferences. In the present circumstances, the respondent clearly knew the statement was false because he was relying on his own direct knowledge, since he attended and took part in the proceedings. It was not based on any belief;

(vi) There were serious errors, omissions and irregularities in the judgment and reasoning of the Sessions Court Judge. Had he properly considered all the evidence adduced as opposed to only those which tended toward an acquittal, he would have concluded that a *prima facie* case had been established.

Defence's Case Before The 2nd SJ

[18] When the respondent was ordered to enter for his defence he elected to give evidence on oath. He also called his counsel Kamar Ainiah (DW2) as his witness. In addition, SP6 was recalled.

[19] The respondent's evidence may be summarised as follows:

(i) The action of the police in forcing him to remember transactions and amounts involving five years ago was cruel (kejam).

(ii) In the High Court during Anwar Ibrahim's trial, all he was trying to do was to convey an indirect speech the meaning he tried to convey to SP6 during the remand. It was his perception that the meaning he tried to convey to SP6 was that he was being forced or threatened by the cruel actions of the police.

(iii) As far as he was concerned, the DNA tests contain the element of threat and cruelty to him, his wife and his child.

(iv) In the High Court, he had nothing to refer to. What he said was based on his memory and perception. Indeed at that time of testifying in the High Court, he could not remember everything he had told the Magistrate.

(v) He tried to explain to the SP6 as clearly as possible and his perception and SP6 understood what he was trying to convey. The meaning of the words is important. That was why he did not use the words such as 'ugut' and 'kejam' before SP6.

[20] SD2 in her evidence testified when he met the respondent on 22 September 1998, the respondent told her to "get me out, saya tidak boleh tahan".

[21] SP6, upon recalled testified that during cross-examination earlier in the proceedings he used the words "saya fikir begitu", "saya anggap begitu" and "mungkin" were based on his conclusions on the facts he perceived and not based on speculations. He further added:

Q. Setelah mendengar apa yang dinyatakan oleh OKT, kamu tiada sebarang keraguan bahawa beliau telah dipaksa dan diugut secara kejam.

A. Adalah benar.

Q. Adakah kamu terkeliru semasa memberi jawapan semasa memberi keterangan di Mahkamah.

A. Saya tidak keliru. Jika saya terkeliru saya akan minta penjelasan dari OKT atau peguam.

Q. Setujukah bahawa walaupun perkataan ugut, paksa dan kejam tiada direkodkan oleh kamu, tetapi berdasarkan kepada fakta dan hujah yang dikemukakan oleh peguam dan OKT masa itu kesimpulan yang tidak dapat dielakkan ialah OKT itu telah diugut dan paksa secara kejam.

A. Saya setuju.

Findings Of The 2nd SJ

[22] The 2nd SJ rejected the defence's case and in finding the respondent guilty, he held *inter alia* as follows:

(i) The respondent admitted that he did not use the words 'ugut, kejam, paksa' but that the words he used did convey that meaning. This cannot be accepted because no matter how the respondent put it, the words used by him cannot possibly convey the meaning that he was being cruelly treated by the police. The respondent himself said the police were merely questioning him, and questioning is the usual way for police to get information;

(ii) The name 'Anwar Ibrahim' did not appear at any place in the record of proceedings during remand. As such, it is impossible the name 'Anwar Ibrahim' came up during the remand. The letter (P8) which the respondent wrote to the police after release confirms that he was not ill-treated during the remand. The letter (P8) negates the defence of the respondent;

(iii) He cannot accept the respondent's contention that what he told the Magistrate raised an inference that the respondent was ill-treated and forced to implicate Anwar Ibrahim. The respondent was not able to raise a reasonable doubt.

Findings Of The 2nd HCJ

[23] The 2nd HCJ, in acquitting the respondent held *inter alia* as follows:

(i) The court had to have nett conclusions similar in effect to that as concluded by the 1st HCJ in the sense that the court must be satisfied that the prosecution did establish a *prima facie* case against the respondent. On the other hand, if the court finds itself unable to agree with the 1st HCJ's reasoning, then, there is no need to look into the evidence at the defence stage or the grounds of decision of the 2nd SCJ;

(ii) The court's evaluative analysis of both the judgments of the 1st SJ and the 1st HCJ compelled it to agree with the essential effects of the reasons advanced by the 1st SJ. The decision of the 1st HCJ pivoted essentially on his interpretation of relevant facts and not the law. It is that interpretation with which the court cannot agree as compared to which were elaborately *(sic)* covered by the 1st SJ;

(iii) The conclusions by the 1st SJ are the end products of his careful filteration and maximum evaluation of relevant facts after taking into consideration SP's demeanour. The words used by the Magistrate like 'saya anggap begitu' should not be interpreted to mean 'I think so' but 'it was so' and that is 'merupakan satu tindakan kejam oleh pihak polis'. As such, it was not speculative of the 1st SJ to conclude that Lampiran 'A' did not offend s. 193 of the Penal Code;

(iv) The court is in full agreement with the 1st SJ that the prosecution had failed to establish a *prima facie* case. As stated earlier, it would not be necessary to go further but to allow the appeal.

Findings Of This Court

[24] Before us, the learned Deputy Public Prosecutor, Encik Manoj Kurup, in his submission admitted that the present case is not the traditional case under s. 193 of the Penal Code. According to him, this is the first case of its kind and candidly put forth his argument as follows: "The respondent was under oath when he made the statement in Lampiran 'A' stating:

> Saya mengatakan kepada Majistret mengapa saya tidak boleh dilanjutkan tempoh tahanan kerana tindakan dan ugutan pihak polis semasa dalam tahanan adalah terlalu kejam dan memaksa saya membuat pengakuan yang melibatkan saudara Anwar.

But the respondent had never told the Magistrate (SP6) the above statement during remand proceedings. He did not tell SP6 that he had been threatened and forced to implicate Dato' Seri Anwar Ibrahim. Thus, by testifying in the High Court that he told SP6 those matters, the respondent patently told a falsehood. Since those words were uttered by the respondent himself with respect to matters at a proceeding at which he was present and personally spoke, the respondent intentionally gave false evidence and thus, satisfying the ingredients of a charge under s. 193 of the Penal Code.

[25] We have no hesitation to state strongly that witnesses giving evidence in court must tell the truth. Witnesses on oath must respect the sanctity of the oath 'to tell the truth, the whole truth and nothing but the truth'. In the words of Ajaib Singh J in the case of *Public Prosecutor v. Bhandulananda Jayatilake* [1981] 1 CLJ

42; [1981] CLJ (Rep) 231 "... people who appear as witnesses in court should never deviate from the truth. True testimony alone will assist the court in arriving at a true verdict". A

[26] However, the issue before us, as started earlier is whether the statement of the respondent in Lampiran A was a false statement. To prove its case that Lampiran A is a false statement, the prosecution basically relied on the evidence of SP4 and SP6. SP4, the Investigating Officer told the court that at no time during the remand proceedings never did the respondent told SP6 that he had been threatened and forced to implicate Dato' Seri Anwar Ibrahim. B C

[27] SP6, the Magistrate during examination in chief told the court that as far as he could remember, he had recorded whatever was said by the respondent and also the submission by the respondent's counsel. He further testified that had the respondent stated that further remand should not be granted because he had been threatened and forced to implicate Dato' Seri Anwar Ibrahim, he would have had recorded it. D

[28] The question is, are those evidence sufficient to establish a *prima facie* case against the respondent. With respect, we do not think so. This is because from the facts that came out through the cross-examination of SP4 and SP6, we are unable to hold that the statement in Lampiran A was certainly false and the respondent had deliberately told a falsehood. It is established through cross-examination of PW4 by the defence that: E F

(i) The respondent underwent long period of interrogation over duration of seven days. During those periods, he had no access to lawyers. G

(ii) ASP Rodwan wanted the respondent to do a medical check-up and PW4 took the respondent to Bukit Aman for that purpose on 21 September 1998.

(iii) When the respondent was produced before SP6, he was under full escort and was taken through the tunnel of the court house which did not allow him to see or give instruction to his counsel present in court. H

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(iv) PW6 did not fully record all that had been stated and in particular SP4's reply to respondent and his counsel submission.

[29] Again, the defence through the cross-examination of SP6 was successful in bringing to light the following facts:

(i) Counsel for the respondent was not present when the respondent was brought in to extend the remand. It was SP6, who instructed the police to call for the counsel who were waiting outside, after inquiring the respondent as whether or not he had retained the counsel.

(ii) Dato' C.V. Prabhakaran, counsel for the respondent in his submission before SP6, did say that the respondent was being investigated into allegations contained in '50 Dalil' book against Dato' Seri Anwar Ibrahim. SP6 confirmed that what was submitted by Dato' C.V. Prabhakaran amounted to an objection being raised against the further extension of remand against the respondent.

(iii) SP6 confirmed that the respondent had requested to speak and he granted the permission. SP6 agreed that 2nd DNA test the respondent was subjected to undergo amounted to force being exerted on the respondent.

(iv) SP6 further agreed that the action imposed by the police with unsatisfactory explanation of the respondent regarding the accounts amounted to force being exerted on the respondent.

(v) SP6 also agreed that even though the words threat, force and cruelty were generally not used, but taking into account the submission of the counsel and statement of the respondent, he found the respondent was being threatened, forced and treated with cruelty.

[30] On the above facts, we are of the view that what was stated by the respondent at the criminal trial of Dato' Seri Anwar Ibrahim as in Lampiran A was his summary and essence of what he conveyed to SP6 at the remand proceedings. The two statements may differ in its form, and words usage, but essentially it conveyed the same meaning in that the respondent was being threatened, treated with cruelty and being forced to implicate Dato' Seri Anwar Ibrahim. The difference, if any, may be a question of degree or emphasis.

[31] If the remand proceeding is taken in totality, it is inevitable to deny that some elements of threat, cruelty and force were instigated. The prosecution's case itself shows that the respondent had been subjected to long hours of interrogation. The respondent's statement to SP6 that the police wanted him to undergo a second DNA test, smacks of cruelty, threat and force used on the respondent. The constant harassment harboured by the police in refusal to accept the respondent's explanations as to his accounts also indicate force being exerted on the respondent.

[32] Further, it cannot be said the threat, forced and cruelty exerted on the respondent did not implicate Dato' Seri Anwar Ibrahim. The respondent's counsel in his submission to SP6 had referred to the book of '50 Dalil' which implicate Dato' Seri Anwar Ibrahim. The prosecution witness, SP4 also made himself referred to the book in his diary in the application for extension of the respondent's remand.

[33] The respondent in his statement to SP6 has as well referred to the book. He informed SP6 that he was investigated by the police on the content of the book. He told SP6 that he cooperated with the police and underwent a DNA test. Even his wife and child were not spared from taking the test. The DNA result confirmed that the respondent is the biological father. The result was announced by the Inspector General of Police.

[34] The question is why do the police wanted another DNA test done on the respondent. The irresistible inference is that the police wanted to implicate Dato' Seri Anwar Ibrahim as the father of the respondent's child as alleged in the '50 Dalil' book. Therefore the contention of the prosecution that there was no mention of Dato' Seri Anwar Ibrahim being implicated during the remand proceeding is contrary to the evidence adduced in this case. Thus, we are unable to hold that the respondent was telling a falsehood when he stated before Augustine Paul J, that he was in fact being forced to implicate Dato' Seri Anwar Ibrahim. Clearly, the respondent has some basis to make that statement.

[35] Ratanlal and Dhirajlal, in the latest edition of the Law of Crimes on the subject of giving false evidence stated as follows:

> The true rule in a case of giving false evidence is that no man can be convicted of giving false evidence, except on proof of facts which, if accepted as true, should not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand, because assuming all that is proved to be true, it is still possible that no crime was committed.

[36] In *D.P. Vijandran v. PP* [1999] 1 CLJ 691, Gopal Sri Ram, JCA speaking on the same subject, quoted Sir Hari Singh Gours' work on the 'Indian Penal Code' which states:

> It is incumbent on the prosecution to show that the statement made by the accused was false. It must prove that it is not probably but necessarily false and that he knew it to be false. A statement might be inaccurate, ambiguous, dubious or uncertain. But it is not on that account necessarily false. The fact that the statement as suggested a wrong inference may suffice to make it false, but it cannot then be held to be intentionally false.

[37] Applying the above principle to the facts of the present case, it is our view that the prosecution had failed to show that the statement of the respondent as in Lampiran A was false. We are of the view that it was not incredible nor impossible that the statement in Lampiran A can be true. No doubt the words in Lampiran A were not the exact words stated by the respondent to SP6 during the remand proceeding, but taking the remand proceeding as a whole, the statement may not necessarily be false or that the respondent had intentionally given false evidence.

[38] At the end of it, we are of the view that the Public Prosecutor in prosecuting the respondent was stretching the prosecution's net far too wide. And the net result was that a reasonable doubt as to the truth of the prosecution's case been successfully raised by the defence. It is trite law that in a criminal trial if the defence raises a reasonable doubt as to the truth of the prosecution's case or as to the accused guilt, he then must be acquitted. The evidential burden may be discharged at the prosecution stage or after defence has been called. (*Mah Kok Cheng v. R* [1953] 1 LNS 53, *PP v. Saimin & Ors* [1971] 1 LNS

115). In the present case, the defence had discharged the burden at prosecution case itself. The respondent must therefore be entitled to an acquittal and discharge without the necessity of calling for his defence.

[39] Accordingly, we dismissed the appeal. We uphold the acquittal of the respondent.